

**United States Extractive Industries Transparency Initiative
Multi-stakeholder Group
Federal Advisory MSG
Terms of Reference**

I. Introduction

The updated terms of reference described herein are adopted by the U.S. Extractive Industries Transparency Initiative Federal Advisory Committee (MSG) in order to set forth protocols for how the MSG will organize itself, conduct business and reach decisions, in fulfillment of its mission as described in the attached MSG Charter.

II. Background

The Extractive Industries Transparency Initiative (EITI) is a voluntary, global effort designed to increase transparency, strengthen the accountability of natural resource revenue reporting, and build public trust for the governance of these vital activities. Participating countries publicly disclose revenues received by the Government for resource extraction, while companies make corresponding disclosures regarding these same payments to the Government, and both sets of data are reviewed and reconciled by a mutually agreed upon independent third party. Results are then released in a public report. The design of each nation's EITI Report is country-specific and developed jointly by a Multi-Stakeholder Group (MSG) composed of representatives of government, industry and civil society stakeholders through a consensus-based process.

On September 20, 2011, President Obama declared the U.S. intention to implement EITI as a signature initiative of the U.S. National Action Plan for the Open Government Partnership. On October 25, 2011, President Obama appointed the Secretary of the Interior as the senior U.S. official to lead the U.S. effort to implement EITI. On that same day, the Secretary committed to working with civil society, industry, and the American public to implement EITI. On July 26, 2012, following a stakeholder assessment which included several months of public outreach and comment, the Secretary established a Federal Advisory Committee Act (FACA) committee to serve as the initial MSG for United States EITI (USEITI) implementation, and sought nominations for MSG membership from government, industry and civil society stakeholders. On December 21, 2012, the Secretary appointed 21 members and 20 alternates to serve on the MSG. At the third public meeting of the MSG, May 1 – 2, 2013, the MSG approved their inaugural Terms of Reference (TOR). In June 2016, the MSG reviewed and approved this revised TOR.

III. Objective

The Committee serves as the USEITI Multi-Stakeholder Group; provides collaborative and consensus-based oversight of USEITI implementation; and, acts as a forum for consultation among stakeholder representatives. The MSG's advice to the Secretary will be made available to all other interested parties and the public. Its duties include consideration and fulfillment of the tasks required to achieve compliance with the EITI standard. In that capacity, the MSG will:

- Develop and recommend to the Secretary the Independent Administrator Terms of Reference; and the annual fully-costed work plan. The work plan should contain measurable targets and a timetable for implementation, incorporating an assessment of capacity constraints. The plan shall be developed in consultation with key USEITI stakeholders and published upon completion.
- Provide opportunities for collaboration and consultation among USEITI stakeholders.
- Advise the Secretary and post for consideration by other stakeholder's proposals for conducting long-term oversight and other activities necessary to achieve EITI compliant status.

IV. Scope

- A. The scope of MSG activities changes from year-to-year. The MSG documents activities in the annual work plan, MSG meeting summaries, statements of work for EITI support contractors, and other documents. The MSG develops the annual work plan in consultation with key EITI stakeholders, posts for public comment, and publishes the final workplan upon approval by the MSG.
- B. The MSG will approve or endorse USEITI reporting and engage in the validation process. The scope of USEITI reporting includes but is not limited to: annual workplans for U.S. implementation of EITI, USEITI reporting templates, annual activity reports and the Annual USEITI Report.
- C. The MSG will comply with U.S. laws and regulations.
- D. The MSG will undertake outreach activities, including communications with citizens, civil society groups, and companies, informing them of the governments' commitment to implement USEITI, the central role of companies and civil society, and by widely disseminating the public information that results from the USEITI process.

V. Membership

Consistent with the MSG Charter, MSG membership will consist of representatives from government, industry and civil society. The Secretary of the Interior appoints the MSG members and alternates as individuals. Any changes or vacancies in membership require a new appointment by the Secretary under the FACA nomination process as described in the Charter. MSG membership reflects the EITI requirement to include representation from government, industry, and civil society stakeholder sectors (Sectors).

Alternates have an important and valuable role in the process. Alternates should attend in person or via teleconference as many MSG meetings as possible to ensure that they are informed and up to speed on issues that have been discussed, ongoing deliberations, and agreements reached on recommendations. A MSG member may, as appropriate, give their proxy to any alternate in their Sector to participate in the MSG's discussions and deliberations "at the table" in lieu of that member's participation from that seat, for any meeting or portion of a meeting. Such proxy may be given when a member is absent and/or when an alternate has unique knowledge or perspective regarding a particular agenda item for which the member does not have the same expertise. The designation of proxies should be determined prior to each meeting or as soon as practicable during the meeting.

VI. MSG Leadership

In the MSG Charter, the Secretary has appointed the Assistant Secretary of Policy, Management and Budget as the Designated Federal Official (DFO). The MSG will report to the Secretary through the DFO. The DFOMSG, in consultation with Co-chairs, will approve all MSG and Subcommittee meetings, prepare and approve all meeting agendas, attend all MSG and Subcommittee meetings, and adjourn any meeting when she determines adjournment to be in the public interest. The DFO or her designee will serve as the principal Chair for the MSG and for the government sector.

The MSG will also designate Co-Chairs from the industry and civil society sectors. The responsibility of the Co-Chairs will be to assist the Chair with agenda development, help the MSG keep on track with its work plan, help move discussions forward in meetings, and to collaborate with the full MSG to resolve impasses, tensions, and conflicts among members or sectors.

The Chair and Co-Chairs will periodically review and assess the MSG's progress to determine if the process is meeting the MSG's needs and the goals of the Charter, and to ensure compliance with these operating procedures.

VII. Decision-making

- A. Quorum: In order for the MSG to reach decisions, there shall be at least a majority of members present from each Sector (alternates stand in equally for any missing primary member as previously noted).
- B. The MSG renders the following kinds of decisions.
 - a. Decision: MSG decisions key to meeting EITI international standards;
 - b. Approval: Approving documents and reports/work products and processes, as required by the EITI Standard or in administration of FACA/MSG; and
 - c. Confirmation: Confirming previous decisions or actions.
- C. Consensus: The MSG will strive to operate by consensus.
 - 1. We define consensus as *unanimous* consent of the members, or in the absence of a primary member, their alternate, after MSG discussion. Granting consent means a member *accepts*, even if reluctantly, the agreement that emerges. Members may choose to "abstain." Abstention is a non-vote, and therefore does not count against consensus.
 - 2. If a representative disagrees with a proposal, he or she should make every effort to offer an alternative satisfactory to all members.
 - 3. In the rare occurrence where a member is absent from a meeting in which consensus will be deliberated or decided, and no alternate is present on their behalf, the absences will be equivalent to not withholding consent.

4. The MSG may change or modify these operating procedures by an affirmative vote of a majority of members within each sector (as noted under sector-based voting below). All changes or modifications will be reflected in writing in an updated Terms of Reference.

D. Agreement:

1. Recommendations are by consensus whenever possible. Recommendations may cover more than one topic and these will likely be issued throughout the term of the MSG in order to attain EITI candidacy and compliance as defined by EITI rules.
2. When the MSG reaches consensus on a recommendation or group of recommendations, it will transmit such to the Secretary through the DFO.
3. If the MSG does not reach consensus, in order to move the implementation of EITI forward, it will use the sector-voting procedure detailed below in the section titled "Addressing Impasse."

E. Addressing Impasse:

1. If the MSG is unable to reach consensus as noted above, the MSG may: 1) appoint at least one member from each Sector to deliberate on the issues outside of or between meetings, develop a recommendation or options for resolution; 2) refer the issue back to a Subcommittee or its work groups for further resolution; or if not successful; 3) refer the issue to the co-chairs. In any case, recommendations or options developed by any of the above must be brought back to the MSG for final deliberation and decision.
2. If the MSG remains unable to reach consensus, the MSG can use a sector-based voting procedure to resolve the impasse. If the vote occurs at an in-person meeting, the vote of a designated alternate shall count as the vote of the designating member. The sector-based voting procedure shall operate as follows:
 - a. A quorum of MSG members will be represented in decision-making as defined above.
 - b. The MSG will attempt to achieve modified consensus consisting of two-thirds majority of exercised votes within each sector (i.e., minus abstentions).
 - c. If one Sector cannot achieve modified consensus in favor of the issue in question, then the proposal or resolution is considered not passed and the MSG must work to develop alternative approaches to satisfy the interest of the Sectors in order to move the issue forward.
3. On matters of process (agenda setting, changing the agenda, sequencing issues, and other process decisions), should the MSG reach an impasse, the Chair, after consulting with the other Co-Chairs, will render a decision as to whether to move the proceedings forward. If there is a dispute about whether a matter is one of process or policy, that dispute will be resolved by a vote according to the sector-based voting outlined in section D.2 above.

VIII. MSG Meetings

- A. Meeting Frequency: The DFO determines meeting frequency after DFO consulting with the Co-chairs. The DFO and her staff will organize the meetings. All meetings will be conducted in accordance with the Federal Advisory MSG Act (FACA).
- B. Notification and Public Attendance: The government will publish notice of all meetings of the full MSG at least 15 business days prior to the meeting date in the Federal Register, on the USEITI MSG website, and in other outlets, as the MSG determines, prior to the meeting. All MSG meetings will be open to the public, and alternatives such as dial-in numbers or webcasts will be made available whenever possible and provided to the public in advance of the meeting via the notification mechanisms listed above. All members of the public are welcome to attend MSG meetings.
- C. Public Comment: Opportunities for oral public comment will be provided at least once per MSG meeting. The DFO and Co-Chairs shall determine the time allotted for and procedure governing these comments. The MSG is not expected to respond to these comments during the oral public comment period. Members of the public may file written comments to the MSG through the DFO, before or after meetings. MSG members will review and discuss written comments in the meeting as appropriate. Oral or written comments to the MSG will become part of the public record.
- D. Agenda and other MSG meeting materials: The DFO, in consultation with the Co-Chairs, is responsible for developing and distributing an agenda for all MSG meetings.

The target timeframe for distributing the Agenda and other MSG meeting materials is preferably two weeks but no less than one week prior to the meeting date. Meeting agendas and supporting documents will be developed in accordance with FACA and posted prior to each meeting for the public. The meeting agendas will lay out clear times for convening and adjourning each day and for major agenda items.

- E. Caucuses: Members may caucus by and among subgroups of MSG members outside of the meeting at any time, such as by sector. No MSG decisions, however, can be reached outside of full and public MSG deliberations.
- F. Sector Protocols: Each sector (civil society, government, and industry) may develop its own internal protocols for sharing information, meeting to develop positions, obtaining technical assistance and so forth.
- G. Subcommittees:
 - 1. The MSG, with approval of the DFO and in consultation with the Co-Chairs, may form Subcommittees or work groups to advance discussion, generate options, and develop preliminary proposals. Subcommittees or work groups must be created by the full MSG and have a clear purpose stated in the MSG meeting minutes when the Subcommittee or group is formed. The purpose of the Subcommittee cannot be modified, altered or expanded without full MSG consensus and opportunity provided to each Sector to modify its Subcommittee representatives in light of the revised Subcommittee purpose. A Subcommittee or work group is not a decision-making body. Alternates may participate actively in Subcommittees and work groups. Others may be invited to participate on

Subcommittees by agreement of the Co-Chairs.

2. Each Subcommittee or work group must include at least one MSG primary member or alternate from each of the sectors. Subcommittees and workgroups are not subject to the meeting notice or records requirements of the MSG. However, to encourage transparency, when the Subcommittee reports out to the full MSG, it should summarize its meetings and activities for incorporation into the public record and should provide agendas, notes of meetings, and lists of attendees for the public record.
- H. Technical Assistance: Upon approval of the DFO, the MSG may accept technical assistance from its members' own organizations and may also seek technical assistance from representatives of other organizations. Technical advisors have no authority to make decisions on behalf of the MSG, nor can they report directly to the Department of the Interior. The MSG may invite technical advisors to make presentations at MSG meetings. Sectors may also choose to retain their own technical assistance. The MSG may, upon consent of the Co-chairs, invite one or more technical experts to the table for discussion of specific topics at MSG meetings. However, those technical experts will only participate at the table during a specific agenda item, for discussion only, and will not participate in MSG final decisions.
- I. Meeting Summary: A summary or minutes of each MSG meeting as mandated by FACA will be prepared by the DFO or her designee and, after review and approval by the MSG, will be circulated to the MSG and made available to the public on the USEITI MSG website. The DFO or her designee will prepare and distribute a draft to the MSG within three weeks of a MSG meeting. MSG members will provide comments to their respective MSG Co-Chair within two weeks of receiving the draft and vote to approve the minutes at the next MSG meeting.
- J. Communication with and submittals to the EITI International Secretariat and Board: The MSG notes that any official transmittals to the International Secretariat and/or Board (for instance, documents to meet timelines and compliance) from the MSG are conducted through the Secretary of Interior, the DFO or their designee. However, members or Sectors may communicate with the International Secretariat and/or Board directly as they feel necessary to seek clarity or better understanding of EITI.

IX. MSG Member Responsibilities

All MSG members and alternates:

- A. Must act in good faith in all aspects of their deliberations. Good faith requires that: 1) individuals not represent their own personal or organization's views as the views of the entire MSG; and 2) that the views and opinions they express in the MSG deliberations are consistent with the views they express in other forums.
- B. Commit to engage and participate productively with the MSG and work collaboratively in line with the USEITI requirements and workplan.
- C. Commit to the principles of consensus building, collaboration, decency, civility, and tolerance. MSG

- D. Exercise leadership within their respective constituencies to foster a climate of joint problem solving on the MSG. Members should engage with their constituencies to keep them informed and to seek their constituents' or organization's alignment and support. One of the responsibilities of membership is to help one's organization or constituents, to the extent possible, from harming or undermining the USEITI process.
- E. Are expected to be present for the full meeting times and to be active and engaged. Cell phone calls, emails, and other unrelated activities should take place outside of MSG business at breaks, at lunch, and in the evenings. All cell phones and electronic communication devices should be turned off while the MSG is in session at the request of the Chair.
- F. Will not attribute statements to individuals involved in this process, seek to present or represent the views or position of individual members or alternates, nor attempt to speak on behalf of the MSG as a whole without the consent of said members, alternates or the MSG.
- G. Will coordinate with the Chair and Co-Chairs on any media requests that require official information about MSG business or seek comment on behalf of the MSG. Such requests will be addressed by the MSG Chair, in consultation with the Co-Chairs. "Media" for these purposes includes: print; television and radio; websites; social media sites (Facebook, Twitter, etc.); and any other public information distribution mechanism. This does not restrict members or alternates from communicating their views or the views of their Sector. Members will strive to be accurate in their media communications. Members and alternates are asked not harm or undermine the USEITI process in their media communications.
- H. Will engage in orderly conduct and treat all members respectfully at all USEITI related meetings including Subcommittee and working group calls.
- I. Agree poor attendance, lack of participation, not participating in good faith, or other significant violations of these operating procedures are grounds for the DFO to recommend to the Secretary that a member or alternate be removed from the MSG. If the Secretary removes a member, that seat may be filled by an alternate from the Sector, or with a newly appointed member, as recommended by the Sector. In replacing an alternate from the relevant Sector, the Sector may recommend a replacement, and the Secretary will make every effort to fill the seat to represent that interest within the FACA approval process for membership.
- J. Will focus MSG business on EITI and revenue transparency. MSG members will not utilize MSG meetings as a venue for resolving disagreements or other concerns about non-EITI matters.
- K. Will, on issues where consensus is reached, in the spirit of collaboration, respect the integrity of the MSG and its decision-making process by supporting the consensus to which they themselves have agreed.

A Sector Co-chair may request the DFO recommend to the Secretary, to reappoint a primary member, within their sector, as an alternate member should the Co-Chair feel it necessary to address poor attendance, lack of participation, not participating in good faith, or other significant violations of these operating procedures.

X. Communications between the IA and the MSG

The Department of Interior (DOI) retained the Independent Administrator (IA) to meet various activities outlined in a separate IA Terms of Reference. The activities include preparing various reports necessary to meet the EITI Standard requirements. The IA contract is solely with the Department of Interior under federal procurement and contracting statutes, rules, and regulations. The contract requires the IA to work in close and on-going consultation with the MSG to ensure the multi-sectoral approach outlined in this MSG Terms of Reference and as required by the EITI Standard. The following applies regarding the communications between the MSG and IA.

- Only the appropriate Contracting Officer (CO) may direct the IA and, under some conditions within the overall scope of work, the Contracting Officer Representative (COR).
- The IA must, at all times, work in a fair and non-partisan manner. The EIT Standard requires that the Independent Administrator is found by the multi-stakeholder group to be credible, trustworthy and technically competent (Requirement 4.9.ii).
- The IA's primary interaction with the MSG will occur at MSG meetings and in Subcommittee and Work Group calls and meetings as well as with the Co-Chairs from all three sectors (including DOI representatives).
- MSG members should convey ideas, issues, and input regarding the IA's work at MSG meetings, MSG sanctioned subcommittees or work groups, or through their respective Co-Chair. Individual MSG members or alternates should not contact the IA directly unless as part of their responsibilities on a work group or Subcommittee.
- The Co-Chairs may agree to, if appropriate, the IA meeting with each sector. However, the individual MSG sectors will not meet with the IA without approval of the Co-Chairs, with the exception of DOI meeting with the IA in DOI's role as the Secretariat and contracting entity.
- The MSG will accept or approve various documents produced by the IA as required under the EITI International requirements.
- Any MSG concerns about the performance of the IA should be raised to the Co-Chairs.
- The MSG, through the Co-chairs or a designated work group, will review annually the IA's and facilitator's performance from the previous year and upcoming scope of the work for the upcoming year and provide advice to the DFO, as deemed needed.

X. MSG Duration and Termination

These operating procedures may be amended by the MSG and are subject to biennial review.

XI. Consistency

These operating procedures are intended to be consistent with the MSG Charter, the Federal Advisory Committee Act, and all other applicable laws and regulations. In the event of any inconsistency or conflict FACA, other applicable laws and regulations, and the MSG's Charter shall prevail.

These Terms of Reference do not impair any legal right of any party.